



MEMORANDUM

TO: Mayor and Council Members

FROM: Jesús Garza, Interim City Manager

DATE: April 18, 2023

SUBJECT: [UPDATED] Office of Police Oversight Processes Following Contract Expiration

This memorandum provides several clarifications to my memorandum dated March 31, 2023 regarding the operations of the Office of Police Oversight (OPO) now that the meet and confer agreement with the Austin Police Association (APA) has expired. Our interim OPO Director, Deven Desai, started on April 1, and I asked him immediately to review the ordinances, state law and my March 31st memorandum and recommend any changes or clarifications that may be needed or advisable. After meeting with both Deven and Chief Chacon, I am providing this updated statement of certain specific OPO procedures.

To clarify, the March 31st memo was not intended to be an exclusive list of the OPO's responsibilities but instead addressed several specific areas where OPO operations have direct interface with APD operations. Similarly, this memorandum does not list all of OPO's duties now that the labor contract has expired, but focuses on some of the topics that are of interest to the Council and likely to be of interest to the public.

1. **Overall Authority and Scope.** The Director of the OPO will continue to report directly to the City Manager and will continue to advise on the overall processes and results of administrative reviews conducted by the Austin Police Department's Internal Affairs Division (IAD). The OPO will continue to advise and make non-binding recommendations to the Chief of Police on these investigations. In addition, I expect the OPO to continue to make recommendations to me about APD's policies and procedures, training, etc. that the OPO feels can contribute to improvements at APD. Further, for many years the OPO has advised the City Manager on the public release of police videos, and I expect the OPO to continue this role going forward.

The administrative organization of OPO, including all OPO staff, will continue in its present form. The Director of OPO will continue to have administrative management authority over all OPO operations and staff.

2. **Access to IAD Materials.** OPO will continue to have full access to IAD's investigative process as outlined in this memorandum. OPO staff may continue to make inquiries to the IAD Commander, the Chief of Police, or their designee concerning any pending IAD investigation. OPO staff who have access to information made confidential by state civil service law as needed for its responsibilities and will continue to maintain the confidentiality of that information as required by law.
3. **Intake of Misconduct Complaints Involving APD Officers.** OPO will continue to accept complaints of police misconduct from members of the public as permitted under section 143.312 of the Texas Local Government Code. As required by law, such complainants are required to verify the complaint in writing before a person authorized to take statements under oath.

Individuals who wish to make a complaint but remain anonymous have two options. First, the individual can elect to have IAD send a representative to the OPO office to receive the anonymous complaint in the presence of the complainant and will certify that the complainant is anonymous. This protocol meets a specific requirement section 143.312(g).

Alternatively, the individual wishing to remain anonymous can fill out an "anonymous concern" form through a link on the OPO website. The OPO will notify the person that while the "anonymous concern" link is an option, the City may be limited in what it can do with that information if the complainant doesn't verify their statement under oath.

This anonymous concern practice has been in place in the City for quite some time. Residents routinely email/call various officials at the City (APD, their elected official, City Manager's Office, etc.) to relay a concern they may have about a particular police incident. The City's practice has been to look into those concerns, even if they are not sworn to under oath, and take appropriate action. In that way, this link on the OPO site does not constitute a change in City practice, it simply makes an existing practice easier and more visible for our residents.

OPO will promptly forward all complaints to IAD. Individual complaints will not be posted on the OPO website unless the complaint results in a disciplinary suspension.

4. **Preliminary Review of Complaints.** OPO will continue to conduct preliminary reviews of complaints in order to recommend a classification level for the complaint and to recommend the investigation of specific policy violations. Within five days of receiving the complaint, OPO will forward it to APD, and in turn, APD will promptly turn over all relevant evidence in APD's custody (such as body-worn camera recordings) to the OPO. OPO will have access to any records in IAD's investigative database, but OPO will continue to not have access to CJIS systems (which are subject to federal restrictions enforced by the TX DPS).
5. **Access to IAD Interviews.** OPO will have access to IAD interviews of subject officers in the following manner:

- a. Prior to the expiration of the contract, when a subject officer was interviewed, in the room were two investigators from IAD, the OPO representative, and the subject officer had a contractual right to have his/her representative. As a result of the expiration of the contract, only one IAD investigator and the subject officer will be in the room during the interview. The OPO representative, along with the other IAD investigator, will be given a live video feed to the OPO to view the interview from outside the interview room to monitor the interview in real time. The subject officer's representative will no longer be permitted in the interview room, nor will they be given a live feed to the interview.
- b. During any break in the interview (or prior to closing the interview if there is no break) the OPO may provide the investigator with any questions the OPO wants the investigator to put forward.
- c. The IAD investigator will determine if the question falls within the scope of the written policy violation allegations and will pose the question to the subject officer unless either (i) it falls outside the scope of the allegations, or (ii) there are strategic reasons not to ask the question at that point in the investigation. The IAD investigator and the investigator's chain of command—including the Chief of Police—will resolve any dispute about the IAD investigator asking the question.

I have also asked the interim OPO Director to notify me personally should he feel that the OPO's requested questions are being unreasonably withheld.

- d. OPO will also have access to witness officer interviews via a live feed.
6. **Disciplinary Meetings.** The OPO Director or designee may attend any dismissal review hearing or disciplinary meeting, however, as is current practice, the OPO may not attend the meeting while the Chief of Police and/or the chain of command deliberate the final disposition of the investigation and the level of discipline, if any, to be imposed.
7. **Classification of Misconduct Complaints.** The Police Chief retains all authority to determine the final classification of any complaint of officer misconduct and determine whether to impose discipline, subject to the officer's rights under state civil service law to appeal any disciplinary action.
8. **Access to Digital Records.** In complying with the City's general goal of "digitizing" its records, the OPO does not have, and has not had for many years, "physical files" related to an investigation. Instead, the OPO has access to those records through a secure network drive. The OPO will continue to have the same access to those records so that they may complete the directives of both this memorandum and the relevant city ordinances related to police oversight.

9. **Body Camera Video Access.** The OPO will continue to conduct random assessments of body camera usage and the departments use of force.
10. **Reporting to the Council and the Public.** The OPO will continue to report to both the Council and the public annually on the results of its activities. Additionally, the OPO will continue its community engagement activities and keep me apprised on their activities in this regard.

Again, this updated memorandum is not intended to be an exclusive list of the OPO responsibilities. However, I did want to update you on some of the major issues the OPO will be doing. If you should have any questions, please feel free to contact me.

cc: Bruce Mills, Interim Assistant City Manager
Deven Desai, Office of Police Oversight Interim Director
Chief Joseph Chacon, Austin Police Department